

APPEAL NO. 031833
FILED SEPTEMBER 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 17, 2003. The hearing officer determined that the compensable injury of _____, does not extend to and include the cervical and thoracic spine. The appellant (claimant) appeals on factual sufficiency grounds, submits new evidence, and urges reversal. The respondent (carrier) has responded, urging affirmance.

DECISION

Affirmed.

The claimant attached new evidence to her request for review, which would purportedly support her contention that both the cervical and thoracic spine are part of the compensable injury. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. *See generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The documents submitted were all in existence at the time of the hearing and the claimant did not show that the documents could not have been obtained prior to the hearing below. Thus, the evidence cannot be considered on appeal.

The claimant had the burden to prove that her compensable injury extended to her cervical and thoracic spine. Conflicting evidence was presented on the disputed issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge